

Retirement News for Employers

Helping Business Owners with Retirement Plans

Internal Revenue Service Tax Exempt and Government Entities

Volume 3, Spring 2006

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A New and Improved EPCRS

In each edition of our regular "The Fix Is In" column, we say "Mistakes can happen." We also say "The IRS can help you correct the problem and retain the benefits of your plan." And so, on May 5, we updated this popular program for correcting plan mistakes, known as EPCRS, or the Employee Plans Compliance Resolution System.

With the issuance of the long-anticipated update, [Rev. Proc. 2006-27](#), the revised EPCRS expands not only the types of failures that can be corrected under EPCRS but also the allowable correction methods.

Introducing the updated program, Carol Gold, Director of EP, said, "The ever-changing laws and regulations covering retirement plans necessitate a correction program that is flexible and responsive to the needs of plan participants as well as sponsors. The newly-enhanced EPCRS does these things even better."

The new revenue procedure makes several significant improvements, including:

- A new correction method that estimates the economic loss to an employee excluded from participating in a 401(k) or 401(m) plan;
- New correction methods for certain plan loan failures under the Voluntary Correction Program (VCP);
- Rules on the availability of programs under EPCRS in cases where the plan or plan sponsor is a party to an abusive tax avoidance transaction;
- A new streamlined submission process and fee under VCP for failures to amend a plan timely for good faith and interim amendment requirements;
- Reduced VCP compliance fees for SEPs and SIMPLE IRA plans; and
- New various procedural enhancements.

EP encourages all stakeholders to submit their [comments and suggestions](#). Many of the improvements in the new revenue procedure were the result of feedback from the retirement community.





In conjunction with the issuance of Rev. Proc. 2006-27, EP introduced a new and improved Corrections page on the [Retirement Plans Community web page](#) under the title of “Correcting Plan Errors.” This new and improved page includes a variety of tools designed to highlight the changes in the new procedure:

- **[Summary of Changes](#)**: Describes the differences between Rev. Proc. 2006-27 and its predecessor, Rev. Proc. 2003-44.
- **[Topical Index to Rev. Proc. 2006-27](#)**: A detailed index with entries keyed to rev. proc. section numbers.
- **[EPCRS Update Presentation](#)**: A PowerPoint overview of EPCRS.

Look for a new Retirement Plan Correction Programs CD-ROM to be issued soon, with a comprehensive overview of the correction programs. ■

We're the Big Oh-Two

With this edition, the *Retirement News for Employers* celebrates its 2nd birthday. Since we started publishing way back in aught-five, we've worked on providing you with information that meets this newsletter's mission: Helping Business Owners with Retirement Plans. For example, through regular articles such as “The Fix Is In: Common Plan Mistakes” and “Critical FewPoints,” along with contributions from our friends at the Department of Labor, we want to help you better operate your plan.

But, YOU, our subscribers, are the best judges of whether we have done OUR job. Getting your feedback is essential to us as we continue to grow (we've nearly quadrupled our subscriber base since we started). Tell us what information will best help you operate your business's retirement plan. Your ideas and suggestions for future articles are most welcome. To find out how you can share with us see “**Contacting Employee Plans.**” ■

Product Profiles – 403(b) Tax-Sheltered Annuity Plan for Sponsor and 403(b) Tax-Sheltered Annuity for Participant

Congratulation subscribers! In this edition you get a twofer! We're profiling two new useful products: *403(b) Tax-Sheltered Annuity Plan for Sponsor* ([Publication 4483](#)) and *403(b) Tax-Sheltered Annuity for Participant* ([Publication 4482](#)). As the names suggest, each publication is similar, but geared toward a different audience.

Both products provide information on 403(b) topics such as common mistakes and available resources to help you keep your tax-sheltered annuity healthy.

Topics addressed in the Sponsor publication (Pub 4483) include:

- Qualified Employer;
- Universal Availability;
- Employee Elective Deferral Limits;
- Return of Excess Elective Deferrals and Earnings; and
- Hardship Distribution Requirements.

Topics addressed in the Participant publication (Pub 4482) include:

- Maximum Elective Deferrals;
- Catch-Up Contributions;
- Distributions and Rollovers;
- Loan Limitations; and
- Hardship Requirements.

Both publications can be found at the [Retirement Plans Community web page](#). Each online version includes links for detailed information on topics in underlined text in the publication. Copies of each publication can also be ordered by calling (800) TAX-FORM (829-3676). ■



Critical Few Points...by Michael Julianelle (Director, EP Examinations)

Hello everyone. Before I begin to discuss my thoughts for this month, I want to remind you that I welcome suggestions for topics you would like me to discuss in these pages. It is very important to me that I cover the information you would like to see. Please e-mail your suggestions to RetirementPlanComments@irs.gov. I will do my best to cover your ideas or concerns in future articles.

In previous newsletters, I discussed with you the impact of abusive tax transactions and how they jeopardize and taint the private retirement system in America and promote tax evasion in the Retirement Plans Community. I think it's a good time for me to update you on where we are right now with these schemes.

How to Subscribe to Retirement News for Employers

The *Retirement News for Employers* will be issued only through IRS e-mail. For your free subscription, please go to the [Retirement Plans Community web page](#) and subscribe online by selecting "Newsletters" under "Retirement Plan Community Topics." All editions of the *Retirement News for Employers* are archived there.

For your convenience, we have included Internet links to referenced materials throughout the *Retirement News for Employers*. These links are identified by the blue and underlined text.

Throughout the different functions within the IRS – EP, Small Business/Self-Employed (SB/SE), Large and Mid-Sized Business (LMSB) and more – there is a united stance on proactively deterring promoter schemes and abusive transactions. To encourage voluntary compliance, on October 27, 2005 the IRS issued [Announcement 2005-80](#), the Global Settlement Initiative (known as GSI), which encompassed 21 different abusive transactions.

GSI offered significant reductions on the penalties for these cases in the hope that many affected taxpayers would volunteer to come in and inform us of their involvement.

Processing the applications submitted under the GSI in Announcement 2005-80 is a top priority. **And**, we are also focusing our attentions on those who had the opportunity to come forward, but did not.

If you'll recall, my last article mentioned the establishment of the Employee Plans Compliance Unit (EPCU). This group sent letters to taxpayers with identified abusive schemes eligible for the GSI. For the ones that did not take advantage of the GSI, we will be setting up examination appointments. We will be identifying other abusive situations and setting up examinations on those as well. The LMSB and the SB/SE Divisions are working with us in EP to identify and put a stop to these abusive schemes.

Plain and simple, the IRS is serious about addressing abusive cases that chose not to come in for GSI. Please visit the [Retirement Plans Community web page](#) to find additional information on this topic and what you should do if you know about one of these abusive schemes. Click on "Examinations/Enforcement" then select "EP Abusive Tax Transactions."

WHAT'S NEXT???

In the next issue, one topic I plan to cover is my policy on the "Place of Audit," the preferred location we would like to hold our examination. If you have thoughts about this topic you wish to convey so I can address them in the article, please e-mail them to RetirementPlanComments@irs.gov and type "Place of Audit Comments" in the subject line.

Thank you for reading and enjoy the remainder of your spring season. ■

The Filing Cabinet

Forms – you can't live with them, you can't live without them. Just like you use forms when running your business – everything from spreadsheets to receipts to invoices – you also use forms when dealing with a retirement plan.

Forms & Pubs Update

The new [Form 8905](#), *Certification of Intent To Adopt a Pre-approved Plan* has been released and is now available. Adopters of an individually designed plan or pre-approved plan (not otherwise entitled to the six-year remedial amendment cycle) use this form to request a conversion of their five-year remedial amendment cycle under Part III of [Rev. Proc. 2005-66](#) to the six-year remedial amendment cycle under Part IV of the procedure.

[Form 8717](#), *User Fee for Employee Plan Determination, Opinion and Advisory Letter Request* is being revised to reflect the changes in user fees mandated by Rev. Proc. 2006-8.

New DVD on Identity Theft

Our friends at the Department of the Treasury have developed a DVD for consumers on how to recognize identity theft, how to protect against it, and what to do if victimized.

Copies of "Identity Theft: Outsmarting the Crooks" may be ordered from the Federal Citizen Information Center at (888) 878-3526 (or from the FCIC-05B, P.O. Box 100, Pueblo, CO 81002). Use order number 365NN. Supplies are limited and there is a \$2.00 shipping fee. ■

The following forms and publications have recently been revised and are now available:

- [Form 5310](#), *Application for Determination for Terminating Plan*;
- [Form 5310-A](#), *Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business*;
- [Publication 571](#), *Tax-Sheltered Annuity Plans (403(b) Plans) For Employees of Public Schools and Certain Tax-Exempt Organizations*; and
- [Publication 590](#), *Individual Retirement Arrangements (IRAs)*

All of these forms and publications are available on the

[Retirement Plans Community web page](#) by clicking on "EP Forms & Publications."

And Time Marches On

Before we get too far into the new year, did you know that the IRS has revised its highly popular [Publication 1518](#), *2006 IRS Tax Calendar for Small Businesses and Self-Employed*? The calendar is filled with helpful hints, general tax information and a listing of the most common tax filing dates. Each month highlights a new tax tip that will help small businesses during both the tax filing season and the entire year. You can order a copy by calling (800) TAX-FORM (829-3676).

Disaster-Related Material

In response to the disasters of 2005, the IRS has released the following products:

- [Form 8915](#), *Qualified Hurricane Retirement Plan Distributions and Repayments*, used to report distributions and determine the amount included in income.
- [Publication 4492](#), *Information for Taxpayers Affected by Hurricanes Katrina, Rita, and Wilma*, is a new publication which lists the disaster areas for each hurricane and explains which areas are eligible for administrative relief from the IRS and which areas receive special tax breaks under recently enacted provisions of the tax law. The publication also provides information on how to claim unreimbursed losses, the tax-favored use of retirement savings, and new rules regarding charitable giving. ■

Net Gains

Welcome back to *Net Gains*, the column devoted to providing you with the latest [Retirement Plans Community web page](#) information. This portion of the [IRS web site](#) contains almost everything you want to know about retirement plans but didn't know where to find it.

CONTACTING EMPLOYEE PLANS

The *Retirement News for Employers* welcomes your comments about this issue and/or your suggestions for future articles.

Send comments/suggestions to:

EP Customer Education & Outreach
SE:T:EP:CEO
1111 Constitution Avenue, N.W., PE-4C3
Washington, D.C. 20224

or FAX (202) 283-9525

or E-Mail: RetirementPlanComments@irs.gov

For **EP Taxpayer Assistance**:

For retirement plans technical and procedural questions:

Please call (877) 829-5500

Or visit the EP Customer Account Services section at www.irs.gov/ep.

For questions relating to retirement income, IRAs, Roth IRAs, educational IRAs, medical savings accounts and section 125 cafeteria plans:

Please call (800) 829-1040

For further **Employee Plans Information**: Go to www.irs.gov/ep.

Timing and More Timing

Speaking of “Timing” (*see the story over there to your right*), this edition of our “Timing is Everything” flyer is on [page 9](#) and features info on starting or increasing retirement plan contributions. Maybe the employee has just finished car payments or their kid is out of college or who knows what. There's no time like the present to give yourself a present for retirement.

Feel free to go ahead and print and/or share the flyer with your employees. ■

Plan Sponsor/Employer Material

Just for you: All – or at least a **lot** of – the retirement information designed and written for employers who have (or are considering having) a retirement plan. Over the years, our plan sponsor material had become overgrown and, dare we say, weedy. So we cleaned up the superfluous material, used more descriptive topics and added more useful links. For example, topic headings you'll see include “What Retirement Plans are Available?” and “Retirement Plan FAQs, FYIs, Tips and Tools.” You'll also find more links to more retirement resources from other government agencies such as DOL, the Social Security Administration, the Small Business Administration and so much more. We'll continue adding to, improving and tweaking the material we have. If you don't find what you're looking for, let us know at RetirementPlanComments@irs.gov and we'll get to it.

Correcting Plan Errors

As we mentioned in the cover story, there's a newly-redesigned page on Correcting Plan Errors. In conjunction with the new EPCRS revenue procedure, we now have an even better [Correcting page](#) featuring a variety of tools to help plan sponsors and benefits practitioners alike in using this popular program, such as:

- Revenue Procedure 2006-27, including a Summary of Changes and a Topical Index;
- Voluntary Compliance Program Tools;
- Overview of EPCRS;
- Links to Other EPCRS Resources, EP Forms and Pubs, Other Government Retirement Plan Correction Programs; and More.

Check it out. There's sure to be something there for you.

“Timing is Everything” Archive

If you're new to the *Retirement News for Employers*, or if you're memory-impaired like us here at the RNE and forgot, check out the archive of “Timing is Everything” flyers. Each one-page Timing flyer has plain-language retirement information for employees and plan participants. The Timing archive is on both the Plan Sponsor/Employer and Plan Participant/Employee sections on the [Retirement Plans Community web page](#). And when you go to the online archive, you'll discover that the flyers have even more help to offer because we've provided links on each flyer that provide more details about specific retirement plans and

products. As always, we welcome your suggestions about future Timing topics, so drop us a line at RetirementPlanComments@irs.gov. ■

The Fix Is In: Common Plan Mistakes

In each issue of the *Retirement News for Employers* we present a common mistake that happens in retirement plans. We describe the problem, how it happened, how to fix it and how to lessen the probability of the problem happening again. This edition of the column focuses on “Simple” Retirement Arrangements – SEPs, SARSEPs and SIMPLE IRA Plans.

This Way to the Forums

The 2006 IRS Nationwide Tax Forums will be held in six locations across the country starting next month. The EP seminars are “Accessing Money from a Retirement Plan” and “Roth 401(k) and Tips.” “Accessing Money” presents highlights of minimum required, early, and hardship distributions; loans and prohibited transactions; and the distinction between withdrawals from traditional accounts and Roth accounts. “Roth 401(k)” features the latest information on the new Roth 401(k) accounts as well as tips on avoiding common pit-falls discovered in examination projects conducted on SIMPLE IRA, SEP, and traditional 401(k) plans. In addition, EP will sponsor a booth in the exhibit hall where you can pick up our products or speak with a retirement plan specialist.

The locations and dates are:

Anaheim, CA	June 27 – June 29
Chicago, IL	July 11 – July 13
Atlanta, GA	July 25 – July 27
Orlando, FL	August 1 – August 3
Las Vegas, NV	August 22 – August 24
New York, NY	August 29 – August 31

To get additional information about the Tax Forums, visit www.irs.gov and then go to “Tax Professionals,” “Tax Pro Events” and “IRS Nationwide Tax Forums.” You can register online at www.taxforuminfo.com. ■

The Issue

Many of you make use of one of the “Simple” plans that are designed to be easy to establish and administer. A **SEP** is a Simplified Employee Pension plan. Employer contributions are made directly to an IRA set up for each employee. A **SARSEP** is a SEP established before 1997 that includes a salary reduction arrangement. A **SIMPLE IRA plan** may be adopted by small employers. Employees may choose to make salary reduction contributions and the employer makes matching or nonelective contributions to an IRA set up for each employee.

The Problems

Instead of covering just one failure, this issue will discuss some of the most common failures found with “Simple” IRA-based plans.

- Not updating the plans for new law, such as the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).
- For SARSEPs, failure to pass the deferral percentage test.
- Under or over contribution of funds.

The Fix

The problems discussed will cause a plan to become disqualified, resulting in adverse tax consequences to the employer and employees under the plan; however, employers may get relief from these adverse consequences through the **Employee Plans Compliance Resolution System (EPCRS)** by correcting the failures. The Self-Correction Program (SCP) or Voluntary Correction Program (VCP) can be used to correct these mistakes. In order to fix the

mistake under SCP, generally the mistake must be fixed within two years after the end of the plan year in which the failure occurred. Unless the failure can be classified as insignificant, VCP must be used after this time.

Failure to amend timely for new law can be corrected by adopting the necessary documents that bring the plan into compliance. Any participant benefit lost due to the failure must be restored. For SIMPLE IRA plans, EP is offering employers an **extended time** (until December 31, 2006) to update their plans for EGTRRA.



Failure to pass the deferral percentage test applicable to a SARSEP happens when the average percentage of deferrals made by highly compensated employees (HCEs) exceeds the average percentage of deferrals made by non-highly compensated (NHCEs) by more than 25%.

This failure may be corrected in one of the following ways:

- 1) Contributions that are 100% vested may be made to all eligible NHCEs (to the extent permitted by the law) necessary to raise the percentage needed to pass the test.
- 2) Excess contributions, adjusted for earnings, may be distributed to HCEs. An amount equal to the total amount distributed must be contributed by the plan sponsor and allocated to current or former employees who were NHCEs in the year of the failure.

If the failure involves under contributions, make-up amounts that are fully vested and adjusted for earnings would be made by the plan sponsor. Generally, the earnings rate is based on the investment results that would have applied if the failure had not occurred. If the actual investment results cannot be determined, a reasonable interest rate may be used.

Can We Talk Yet?

When it comes to the preparation of the [Form 5500](#) or [Form 5500-EZ](#) and representation during an EP examination, preparers **should** complete Line 5, Preparer Information. Completion of this line will enable the preparer to act as the taxpayer's representative, but only in matters concerning that particular plan year. ■

Order Up

The IRS is now taking orders for the [2006 Small Business Resource Guide CD-ROM](#).

The CD has valuable forms, instructions and publications. It also provides valuable business information from a variety of government agencies, non-profit organizations and educational institutions. The CD contains essential startup information needed by new small businesses in order to be successful. There's even material on choosing retirement plans suited for small businesses. So place your order now for this essential product. ■

Over contributions or excess amounts are treated differently based on how they occurred:

- 1) If they are due to elective deferrals, the excess amounts, adjusted for earnings, may be distributed to the affected participant, reported on [Form 1099-R](#) and are includible in gross income in the year of distribution. The affected participants must be notified that the corrective distribution is not eligible for favorable tax treatment (i.e., tax-free rollover).
- 2) If they are due to employer contributions, the excess amount, adjusted for earnings, may be distributed to the plan sponsor. The amount distributed is not includible in the gross income of the affected participant and the plan sponsor is not entitled to a deduction for the excess amount. The distribution is reported on Form 1099-R issued to the participant indicating the taxable amount as zero.

If an excess amount is retained in the IRA-based plan:

- 1) A special fee, in addition to the VCP submission fee, will apply.
- 2) Generally, only excess amounts that did not result in a violation of a statutory limitation can be retained.
- 3) No deduction is allowed for an excess amount retained in the plan.
- 4) If the retained excess amount is due to contributions in excess of the legal maximum, the excess amount, adjusted for earnings, must reduce each affected participant's limit for the year following the year of correction (or for the year of correction if the plan sponsor so chooses) and subsequent years, until the excess is eliminated.
- 5) If the total excess amount is \$100 or less, it is not required to be distributed and the special fee will not apply.

Making Sure It Doesn't Happen Again

Employers need to have a system in place to ensure that their IRA-based plans are updated timely for new law. Employers should work with plan

administrators to ensure that the administrators have sufficient payroll information to verify that the proper deferrals and contributions are made to each participant. However, keep in mind that, despite all of your good efforts, mistakes can happen. In that case, the IRS can help you correct the problem and retain the benefits of your qualified IRA-based plans. ■

Let's Just Take It One Three-Month Period at a Time



= contribution



= conference



= file forms

Operating a retirement plan can be a time-consuming job. There are deadlines, not just for reports and forms but also for making contributions. There are conferences and seminars. And then there is information you need to give to participants.

So to help you navigate the retirement plan timeline, here is our month-by-month look at some of the important moments in the months to come. Please note that all of the filing dates below are for calendar-year plans - adjust the dates for non-calendar year plans:



June 1: EBSA Seminar: [Voluntary Fiduciary Correction Program](#) – Sturbridge, MA.



June 7: EBSA Seminar: [Getting It Right – Know Your Fiduciary Responsibilities](#) – San Antonio, TX.



June 27-29: [IRS Nationwide Tax Forum](#) – Anaheim, CA.



July 11-13: [IRS Nationwide Tax Forum](#) – Chicago, IL.



July 15: Second quarterly installment due date for the 2006 plan year.



July 25-27: [IRS Nationwide Tax Forum](#) – Atlanta, GA.



July 31: “Form 5500 Day” – *File [2005 Form 5500](#), Annual Return/Report of Employee Benefit Plan, or [Form 5500-EZ](#), Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan, with DOL/EFAST,*
or



File [Form 5558](#), Application for Extension of Time to File Certain Employee Plan Returns, with IRS to request a 2 1/2 -month extension (October 16, 2006) to file the Form 5500 or Form 5500-EZ.



August 1-3: [IRS Nationwide Tax Forum](#) – Orlando, FL.

For a comprehensive list of upcoming EP Educational Events, visit the [Retirement Plans Community web page](#), select “Plan Sponsor/Employer,” then “Questions: Where to get Answers” and click on “Upcoming EP Educational Events.” ■

IRS employees contributing to this edition of the *Retirement News for Employers* are:

Evelyn DeWald,
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Keith Ruprecht,
John Schmidt,
Brenda Smith-Custer,
Susan Taylor, and
Mikio Thomas

Timing is Everything



Some helpful retirement tips for employees from the IRS...

Phew! April 15th is over. Don't wait until next April to start planning for your retirement.



Have you received a raise? Did your child graduate from college? Did you graduate? Congratulations! Consider increasing your retirement savings while at the same time decreasing your taxable income.....



- * Many plans have quarterly or semi-annual entry dates. If you are not already participating in your plan, consider starting.
- * If you are participating, consider increasing your deferrals.

Did you know.....?

If you turn 50 at any time during 2006, you may be eligible to make catch-up contributions. For 2006, the maximum catch-up contribution is:

- * IRA - \$1,000
- * SIMPLE plan - \$2,500
- * 401(k) or 403(b) plan - \$5,000



For more retirement tips, talk to your employer or visit www.irs.gov/ep, select "Plan Participant/Employee" and click on "Timing is Everything."